

AMENDED IN ASSEMBLY JUNE 13, 2005

AMENDED IN SENATE APRIL 18, 2005

SENATE BILL

No. 231

Introduced by Senator Figueroa

February 15, 2005

An act to amend Sections 802, 802.1, 805.2, 2001, 2019, 2020, 2027, 2220.08, 2225, and 2435 of, ~~and to add Sections 2026, 2334, and 2357 to,~~ *to add and repeal Section 2358 of, and to repeal Article 14 (commencing with Section 2340) of Chapter 5 of Division 2 of,* the Business and Professions Code, to repeal Section 364.1 of the Code of Civil Procedure, and to amend Sections 11371, 11508, *11523*, 12529, and 12529.5 of, ~~and to add Section 11508.1 to,~~ the Government Code, relating to healing arts, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 231, as amended, Figueroa. Healing arts: Medical Board of California.

(1) Existing law provides for the licensing and regulation of various healing arts practitioners by professional boards within the Department of Consumer Affairs. Existing law requires that specified settlements and any arbitration awards of malpractice claims or in malpractice actions against a licensee be reported to the appropriate licensing board by the licensee or claimant, or their counsel. Under existing law, a failure to comply with this requirement is a crime punishable by specified fines.

This bill would also require any judgment in a malpractice action against a licensee to be reported to the appropriate licensing board by the licensee or the claimant, or their counsel, and would make a failure to comply with this requirement a crime. Because the bill would create a new crime, it would impose a state-mandated local program. The bill

would also require the Little Hoover Commission to study ~~the public policy implications of the laws requiring public disclosure of malpractice lawsuits and settlements against licensees~~ *with regard to the public protection mandate of the Medical Board of California*, and to complete the study by December 31, 2007.

(2) The Medical Practice Act provides for licensing and regulation of physicians and surgeons by the Medical Board of California. Under existing law, the provisions creating the board and providing for the appointment of an executive director become inoperative on July 1, 2006, and are repealed on January 1, 2007.

This bill would extend these provisions to July 1, 2010, and January 1, 2011, respectively.

(3) Existing law requires a physician and surgeon to report certain matters to the medical board in writing within 30 days, including the conviction of any felony, and including any verdict of guilty, or plea of guilty or no contest. A failure to make a report is a crime.

This bill would also require a physician and surgeon to report his or her conviction of a misdemeanor ~~substantially related to the qualifications, functions, or duties of a physician and surgeon~~, including any verdict of guilty, or plea of guilty or no contest. Because the bill would expand the scope of an existing crime, the bill would impose a state-mandated local program.

(4) Existing law requires the medical board to post certain information regarding its licensees on the Internet, including whether or not a licensee has been subject to discipline by the board of another state or jurisdiction.

This bill would also require the posting of prior disciplinary action taken by the board and of any misdemeanor conviction that is substantially related to the qualifications, functions, or duties of a physician and surgeon.

(5) Existing law requires the medical board to contract with the Institute for Medical Quality for a comprehensive study of the existing peer review process for discipline of physicians and surgeons. Under these provisions, a written report was to be submitted to the medical board and the Legislature by November 1, 2003.

This bill instead would require the medical board to contract with an independent entity for this comprehensive study, to be completed by July 31, 2007, and would state that the completion of the study is to be among the highest priorities of the medical board.

(6) Existing law authorizes legal proceedings against the medical board to be instituted in either Sacramento, Los Angeles, San Diego, or San Francisco, which are the authorized locations for offices of the medical board.

This bill would establish venue for mandate actions filed against the board in the above-listed city that is closest to the city in which the administrative hearing has been held or is scheduled to be held.

(7) Existing law generally requires complaints received by the medical board that involve quality of care to be reviewed by one or more medical experts and to meet other criteria before they are referred to a field office of the board for investigation.

This bill would exempt new complaints relating to a physician and surgeon who is the subject of a pending accusation or investigation, or who is on probation, from these referral requirements.

(8) Existing law requires a licensee of the medical board to produce documents requested by the Attorney General or investigators of the board within 15 days.

This bill would authorize the board to impose fines for noncompliance with these requirements.

(9) Existing law provides for the medical board to oversee diversion programs for physicians and surgeons with alcohol and drug abuse problems.

This bill would require the Bureau of State Audits to conduct a thorough audit of the medical board's diversion programs by ~~July 1, 2006~~ *June 30, 2007*. The bill would ~~terminate the authority of the board to maintain a diversion program after July 1, 2007~~ *make the diversion program provisions inoperative on July 1, 2008, and repeal them on January 1, 2009, unless the Legislature deletes or extends this authority by statute those dates.*

(10) Existing law provides for the medical board to fix the amount of the initial and biennial licensure fees for physicians and surgeons at a sum not to exceed \$610. Fees are deposited into the Contingent Fund of the Medical Board, which is continuously appropriated to the board.

This bill would authorize the medical board to increase the initial licensing fee *and the biennial renewal fee* to not more than ~~\$800 and the biennial renewal fee to an unspecified amount~~ *\$900*. The bill would also delete certain provisions requiring the board to charge various examination fees. By providing for an increase in licensure

fees deposited into a continuously appropriated fund, the bill would thereby make an appropriation.

(11) Existing law provides that an action based upon the professional negligence of a physician and surgeon or doctor of podiatric medicine may not be commenced unless a specified 90-day notice is also sent to the medical board or the Board of Podiatric Medicine at the same time it is sent to the defendant. Existing law requires each board, as applicable, to maintain the notice as a confidential part of a potential investigation file.

This bill would repeal this provision.

(12) Existing law creates within the Office of Administrative Hearings a Medical Quality Hearing Panel consisting of administrative law judges with medical training, to hear administrative law matters involving physicians and surgeons. Existing law requires decisions of this panel and associated court decisions to be published in a quarterly “Medical Discipline Report,” subject to funding being appropriated by the Legislature.

This bill would delete the requirement for publishing this report. *The bill would also require in matters brought by the Medical Board, that the parties exchange reports describing expert witness testimony before introducing that evidence and would require the Office of Administrative Hearings to adopt regulations governing the exchange of this information.*

(13) Existing law, under the Administrative Procedure Act, provides for administrative hearings involving certain state agencies including the medical board to be held in certain locations throughout the state based upon where a transaction occurred or whether the respondent resides with a certain district of the Court of Appeal. *Under that act, an administrative hearing decision is subject to judicial review by a writ of mandate, and specified costs are assessed for preparation of the record.*

~~This bill would delete the references to the districts of the Court of Appeal relative to hearings requested by the medical board and would instead refer to require, subject to specified exceptions, that the hearing be held at the hearing facilities facility maintained by the Office of Administrative Hearings that is closest to the location where the transaction occurred or the respondent resides. The bill would revise the process for assessing the cost to prepare the record of the administrative hearing for judicial review.~~

(14) Existing law creates the Health Quality Enforcement Section within the Department of Justice with the primary responsibility of prosecuting proceedings against licensees and applicants within the jurisdiction of the medical board and various other boards.

This bill would also make investigation of licensees and applicants a primary responsibility of the Health Quality Enforcement Section *and would require that attorneys staff the intake unit of specified regulatory boards to evaluate and screen complaints and develop uniform standards for their processing.* The bill would make other related changes to these and other provisions.

(15) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 802 of the Business and Professions
2 Code is amended to read:
3 802. (a) Every settlement, judgment, or arbitration award
4 over three thousand dollars (\$3,000) of a claim or action for
5 damages for death or personal injury caused by negligence, error
6 or omission in practice, or by the unauthorized rendering of
7 professional services, by a person who holds a license,
8 certificate, or other similar authority from an agency mentioned
9 in subdivision (a) of Section 800 (except a person licensed
10 pursuant to Chapter 3 (commencing with Section 1200) or
11 Chapter 5 (commencing with Section 2000) of Division 2) or the
12 Osteopathic Initiative Act who does not possess professional
13 liability insurance as to that claim shall, within 30 days after the
14 written settlement agreement has been reduced to writing and
15 signed by all the parties thereto or 30 days after service of the
16 judgment or arbitration award on the parties, be reported to the
17 agency that issued the license, certificate, or similar authority. A
18 complete report shall be made by appropriate means by the
19 person or his or her counsel, with a copy of the communication to

1 be sent to the claimant through his or her counsel if the person is
2 so represented, or directly if he or she is not. If, within 45 days of
3 the conclusion of the written settlement agreement or service of
4 the judgment or arbitration award on the parties, counsel for the
5 claimant (or if the claimant is not represented by counsel, the
6 claimant himself or herself) has not received a copy of the report,
7 he or she shall himself or herself make the complete report.
8 Failure of the licensee or claimant (or, if represented by counsel,
9 their counsel) to comply with this section is a public offense
10 punishable by a fine of not less than fifty dollars (\$50) or more
11 than five hundred dollars (\$500). Knowing and intentional failure
12 to comply with this section or conspiracy or collusion not to
13 comply with this section, or to hinder or impede any other person
14 in the compliance, is a public offense punishable by a fine of not
15 less than five thousand dollars (\$5,000) nor more than fifty
16 thousand dollars (\$50,000).

17 (b) Every settlement over thirty thousand dollars (\$30,000), or
18 judgment or arbitration award of any amount, of a claim or action
19 for damages for death or personal injury caused by negligence,
20 error or omission in practice, or by the unauthorized rendering of
21 professional services, by a physician and surgeon licensed
22 pursuant to Chapter 5 (commencing with Section 2000) of
23 Division 2, or the Osteopathic Initiative Act, who does not
24 possess professional liability insurance as to the claim shall,
25 within 30 days after the written settlement agreement has been
26 reduced to writing and signed by all the parties thereto or 30 days
27 after service of the judgment or arbitration award on the parties,
28 be reported to the agency that issued the license, certificate, or
29 similar authority. A settlement over thirty thousand dollars
30 (\$30,000) shall also be reported if the settlement is based on the
31 licensee's negligence, error, or omission in practice or his or her
32 rendering of unauthorized professional services, and a party to
33 the settlement is a corporation, medical group, partnership, or
34 other corporate entity in which the licensee has an ownership
35 interest or that employs or contracts with the licensee. A
36 complete report including the name and license number of the
37 physician and surgeon shall be made by appropriate means by the
38 person or his or her counsel, with a copy of the communication to
39 be sent to the claimant through his or her counsel if he or she is
40 so represented, or directly if he or she is not. If, within 45 days of

1 the conclusion of the written settlement agreement or service of
 2 the judgment or arbitration award on the parties, counsel for the
 3 claimant (or if the claimant is not represented by counsel, the
 4 claimant himself or herself) has not received a copy of the report,
 5 he or she shall himself or herself make the complete report.
 6 Failure of the physician *and surgeon* or claimant (or, if
 7 represented by counsel, their counsel) to comply with this section
 8 is a public offense punishable by a fine of not less than fifty
 9 dollars (\$50) nor more than five hundred dollars (\$500).
 10 Knowing and intentional failure to comply with this section or
 11 conspiracy or collusion not to comply with this section, or to
 12 hinder or impede any other person in the compliance, is a public
 13 offense punishable by a fine of not less than five thousand dollars
 14 (\$5,000) nor more than fifty thousand dollars (\$50,000).

15 (c) Every settlement, judgment, or arbitration award over ten
 16 thousand dollars (\$10,000) of a claim or action for damages for
 17 death or personal injury caused by negligence, error, or omission
 18 in practice, or by the unauthorized rendering of professional
 19 services, by a marriage and family therapist or clinical social
 20 worker licensed pursuant to Chapter 13 (commencing with
 21 Section 4980) or Chapter 14 (commencing with Section 4990)
 22 who does not possess professional liability insurance as to that
 23 claim shall within 30 days after the written settlement agreement
 24 has been reduced to writing and signed by all the parties thereto
 25 or 30 days after service of the judgment or arbitration award on
 26 the parties be reported to the agency that issued the license,
 27 certificate, or similar authority. A complete report shall be made
 28 by appropriate means by the person or his or her counsel, with a
 29 copy of the communication to be sent to the claimant through his
 30 or her counsel if he or she is so represented, or directly if he or
 31 she is not. If, within 45 days of the conclusion of the written
 32 settlement agreement or service of the judgment or arbitration
 33 award on the parties, counsel for the claimant (or if he or she is
 34 not represented by counsel, the claimant himself or herself) has
 35 not received a copy of the report, he or she shall himself or
 36 herself make a complete report. Failure of the marriage and
 37 family therapist or clinical social worker or claimant (or, if
 38 represented by counsel, their counsel) to comply with this section
 39 is a public offense punishable by a fine of not less than fifty
 40 dollars (\$50) nor more than five hundred dollars (\$500).

1 Knowing and intentional failure to comply with this section, or
2 conspiracy or collusion not to comply with this section or to
3 hinder or impede any other person in that compliance, is a public
4 offense punishable by a fine of not less than five thousand dollars
5 (\$5,000) nor more than fifty thousand dollars (\$50,000).

6 SEC. 2. Section 802.1 of the Business and Professions Code
7 is amended to read:

8 802.1. (a) A physician and surgeon shall report ~~any~~ *either* of
9 the following to the Medical Board of California in writing
10 within 30 days:

11 (1) The bringing of an indictment or information charging a
12 felony against the physician and surgeon.

13 (2) The conviction of the physician and surgeon, including any
14 verdict of guilty, or plea of guilty or no contest, of any felony *or*
15 *misdemeanor*.

16 ~~(3) The conviction of the physician and surgeon, including any~~
17 ~~verdict of guilty, or plea of guilty or no contest, of any~~
18 ~~misdemeanor substantially related to the qualifications,~~
19 ~~functions, or duties of a physician and surgeon, as defined by the~~
20 ~~board.~~

21 (b) Failure to make a report required by this section shall be a
22 public offense punishable by a fine not to exceed five thousand
23 dollars (\$5,000).

24 SEC. 3. Section 805.2 of the Business and Professions Code
25 is amended to read:

26 805.2. (a) It is the intent of the Legislature to provide for a
27 comprehensive study of the peer review process as it is
28 conducted by peer review bodies defined in paragraph (1) of
29 subdivision (a) of Section 805, in order to evaluate the continuing
30 validity of Section 805 and Sections 809 to 809.8, inclusive, and
31 their relevance to the conduct of peer review in California. The
32 Medical Board of California shall contract with an independent
33 entity to conduct this study, which shall include, but not be
34 limited to, the following components:

35 (1) A comprehensive description of the various steps of and
36 decisionmakers in the peer review process as it is conducted by
37 peer review bodies throughout the state, including the role of
38 other related committees of acute care health facilities and clinics
39 involved in the peer review process.

1 (2) A survey of peer review cases to determine the incidence
2 of peer review by peer review bodies, and whether they are
3 complying with the reporting requirement in Section 805.

4 (3) A description and evaluation of the roles and performance
5 of various state agencies, including the State Department of
6 Health Services and occupational licensing agencies that regulate
7 healing arts professionals, in receiving, reviewing, investigating,
8 and disclosing peer review actions, and in sanctioning peer
9 review bodies for failure to comply with Section 805.

10 (4) An assessment of the cost of peer review to licentiates and
11 the facilities which employ them.

12 (5) An assessment of the time consumed by the average peer
13 review proceeding, including the hearing provided pursuant to
14 Section 809.2, and a description of any difficulties encountered
15 by either licentiates or facilities in assembling peer review bodies
16 or panels to participate in peer review decisionmaking.

17 (6) An assessment of the need to amend Section 805 and
18 Sections 809 to 809.8, inclusive, to ensure that they continue to
19 be relevant to the actual conduct of peer review as described in
20 paragraph (1), and to evaluate whether the current reporting
21 requirement is yielding timely and accurate information to aid
22 licensing boards in their responsibility to regulate and discipline
23 healing arts practitioners when necessary, and to assure that peer
24 review bodies function in the best interest of patient care.

25 (7) Recommendations of additional mechanisms to stimulate
26 the appropriate reporting of peer review actions under Section
27 805.

28 (8) Recommendations regarding the Section 809 hearing
29 process to improve its overall effectiveness and efficiency.

30 (b) The independent entity shall exercise no authority over the
31 peer review processes of peer review bodies. However, peer
32 review bodies, health care facilities, health care clinics, and
33 health care service plans shall cooperate with the independent
34 entity and provide data, information, and case files as requested
35 in the timeframes specified by the independent entity.

36 (c) The independent entity shall work in cooperation with and
37 under the general oversight of the ~~Medical~~ *Executive* Director of
38 the Medical Board of California and shall submit a written report
39 with its findings and recommendations to the board and the
40 Legislature no later than July 31, 2007.

1 (d) Completion of the peer review study pursuant to this
2 section shall be among the highest priorities of the Medical
3 Board of California, and the board shall ensure that it is
4 completed no later than July 31, 2007.

5 SEC. 4. Section 2001 of the Business and Professions Code is
6 amended to read:

7 2001. There is in the Department of Consumer Affairs a
8 Medical Board of California that consists of 21 members, nine of
9 whom shall be public members.

10 The Governor shall appoint 19 members to the board, subject
11 to confirmation by the Senate, seven of whom shall be public
12 members. The Senate Rules Committee and the Speaker of the
13 Assembly shall each appoint a public member, and their initial
14 appointment shall be made to fill, respectively, the first and
15 second public member vacancies that occur on or after January 1,
16 1983.

17 This section shall become inoperative on July 1, 2010, and, as
18 of January 1, 2011, is repealed, unless a later enacted statute,
19 which becomes effective on or before January 1, 2011, deletes or
20 extends the dates on which it becomes inoperative and is
21 repealed. The repeal of this section renders the board subject to
22 the review required by Division 1.2 (commencing with Section
23 473).

24 SEC. 5. Section 2019 of the Business and Professions Code is
25 amended to read:

26 2019. (a) The office of the board shall be in the City of
27 Sacramento. Suboffices may be established in the Cities of Los
28 Angeles, San Diego, and San Francisco or the environs of these
29 cities. Legal proceedings against the board shall be instituted in
30 any one of these four cities. The board may also establish other
31 suboffices as it may deem necessary and such records as may be
32 necessary may be transferred temporarily to any suboffices.

33 (b) Legal proceedings against the board shall be instituted in
34 Sacramento, Los Angeles, San Diego, or San Francisco. For
35 mandate actions filed against the board pursuant to Section 1085
36 or 1094.5 of the Code of Civil Procedure, venue shall be in the
37 city designated in this subdivision that is closest to the city in
38 which the administrative hearing has been held, or if a hearing
39 has not yet commenced, the city closest to the city in which the

1 administrative hearing is scheduled to be held pursuant to Section
2 11508 of the Government Code.

3 SEC. 6. Section 2020 of the Business and Professions Code is
4 amended to read:

5 2020. The board may employ an executive director exempt
6 from the provisions of the Civil Service Act and may also
7 employ investigators, legal counsel, medical consultants, and
8 other assistance as it may deem necessary to carry into effect this
9 chapter. The board may fix the compensation to be paid for
10 services subject to the provisions of applicable state laws and
11 regulations and may incur other expenses as it may deem
12 necessary. Investigators employed by the board shall be provided
13 special training in investigating medical practice activities.

14 The Attorney General shall act as legal counsel for the board
15 for any judicial and administrative proceedings and his or her
16 services shall be a charge against it.

17 This section shall become inoperative on July 1, 2010, and, as of
18 January 1, 2011, is repealed, unless a later enacted statute, which
19 becomes effective on or before January 1, 2011, deletes or
20 extends the dates on which it becomes inoperative and is
21 repealed.

22 SEC. 7. Section 2026 is added to the Business and Professions
23 Code, to read:

24 ~~2026. The board shall request the Little Hoover Commission~~
25 ~~to study the public policy implications of the laws requiring~~
26 ~~public disclosure of malpractice lawsuits and settlements against~~
27 ~~licensees of the board. *Little Hoover Commission shall study and*~~
28 ~~*make recommendations on the role of public disclosure in the*~~
29 ~~*public protection mandate of the board. This study shall include,*~~
30 ~~*but not be limited to, whether the public is adequately informed*~~
31 ~~*about physician misconduct by the current laws and regulations*~~
32 ~~*providing for disclosure.*~~ This study shall be commenced as soon
33 as possible and completed no later than December 31, 2007.

34 SEC. 8. Section 2027 of the Business and Professions Code is
35 amended to read:

36 2027. (a) On or after July 1, 2001, the board shall post on the
37 Internet the following information in its possession, custody, or
38 control regarding licensed physicians and surgeons:

39 (1) With regard to the status of the license, whether or not the
40 licensee is in good standing, subject to a temporary restraining

1 order (TRO), subject to an interim suspension order (ISO), or
2 subject to any of the enforcement actions set forth in Section
3 803.1.

4 (2) With regard to prior discipline, whether or not the licensee
5 has been subject to discipline by the board or by the board of
6 another state or jurisdiction, as described in Section 803.1.

7 (3) Any felony convictions reported to the board after January
8 3, 1991.

9 (4) All current accusations filed by the Attorney General,
10 including those accusations that are on appeal. For purposes of
11 this paragraph, “current accusation” shall mean an accusation
12 that has not been dismissed, withdrawn, or settled, and has not
13 been finally decided upon by an administrative law judge and the
14 Medical Board of California unless an appeal of that decision is
15 pending. The board may post all accusations that are not
16 dismissed or withdrawn.

17 (5) Any malpractice judgment or arbitration award reported to
18 the board after January 1, 1993.

19 (6) Any hospital disciplinary actions that resulted in the
20 termination or revocation of a licensee’s hospital staff privileges
21 for a medical disciplinary cause or reason.

22 (7) Any misdemeanor conviction that is substantially related to
23 the qualifications, functions, or duties of a physician and
24 surgeon.

25 (8) Appropriate disclaimers and explanatory statements to
26 accompany the above information, including an explanation of
27 what types of information are not disclosed. These disclaimers
28 and statements shall be developed by the board and shall be
29 adopted by regulation.

30 (9) Any information required to be disclosed pursuant to
31 Section 803.1.

32 (b) (1) From January 1, 2003, the information described in
33 paragraphs (1) (other than whether or not the licensee is in good
34 standing), (2), (4), (5), ~~and (8)~~ (7), and (9) of subdivision (a)
35 shall remain posted for a period of 10 years from the date the
36 board obtains possession, custody, or control of the information,
37 and after the end of that period shall be removed from being
38 posted on the board’s Internet Web site. Information in the
39 possession, custody, or control of the board prior to January 1,
40 2003, shall be posted for a period of 10 years from January 1,

1 2003. Settlement information shall be posted as described in
2 paragraph (2) of subdivision (b) of Section 803.1.

3 (2) The information described in paragraphs (3) and (6) of
4 subdivision (a) shall not be removed from being posted on the
5 board's Internet Web site. Notwithstanding the provisions of this
6 paragraph, if a licensee's hospital staff privileges are restored and
7 the licensee notifies the board of the restoration, the information
8 pertaining to the termination or revocation of those privileges, as
9 described in paragraph (6) of subdivision (a), shall remain posted
10 for a period of 10 years from the restoration date of the
11 privileges, and at the end of that period shall be removed from
12 being posted on the board's Internet Web site.

13 (c) The board shall provide links to other Web sites on the
14 Internet that provide information on board certifications that
15 meet the requirements of subdivision (b) of Section 651. The
16 board may provide links to other Web sites on the Internet that
17 provide information on health care service plans, health insurers,
18 hospitals, or other facilities. The board may also provide links to
19 any other sites that would provide information on the affiliations
20 of licensed physicians and surgeons.

21 SEC. 9. Section 2220.08 of the Business and Professions
22 Code is amended to read:

23 2220.08. (a) Except for reports received by the board
24 pursuant to Section 805 that may be treated as complaints by the
25 board and new complaints relating to a physician and surgeon
26 who is the subject of a pending accusation or investigation or
27 who is on probation, any complaint determined to involve quality
28 of care, before referral to a field office for further investigation,
29 shall meet the following criteria:

30 (1) It shall be reviewed by one or more medical experts with
31 the pertinent education, training, and expertise to evaluate the
32 specific standard of care issues raised by the complaint to
33 determine if further field investigation is required.

34 (2) It shall include the review of the following, which shall be
35 requested by the board:

36 (A) Relevant patient records.

37 (B) The statement or explanation of the care and treatment
38 provided by the physician and surgeon.

39 (C) Any additional expert testimony or literature provided by
40 the physician and surgeon.

1 (D) Any additional facts or information requested by the
2 medical expert reviewers that may assist them in determining
3 whether the care rendered constitutes a departure from the
4 standard of care.

5 (b) If the board does not receive the information requested
6 pursuant to paragraph (2) of subdivision (a) within 10 working
7 days of requesting that information, the complaint may be
8 reviewed by the medical experts and referred to a field office for
9 investigation without the information.

10 (c) Nothing in this section shall impede the board's ability to
11 seek and obtain an interim suspension order or other emergency
12 relief.

13 ~~(d) The enforcement monitor shall in its initial report address~~
14 ~~whether a complaint received by the board relating to a physician~~
15 ~~and surgeon who is the subject of a pending investigation,~~
16 ~~accusation, or on probation should be reviewed pursuant to this~~
17 ~~section or referred directly to field investigation.~~

18 SEC. 10. Section 2225 of the Business and Professions Code
19 is amended to read:

20 2225. (a) Notwithstanding Section 2263 and any other
21 provision of law making a communication between a physician
22 and surgeon or a podiatrist and his or her patients a privileged
23 communication, those provisions shall not apply to investigations
24 or proceedings conducted under this chapter. Members of the
25 board, the Senior Assistant Attorney General of the Health
26 Quality Enforcement Section, members of the California Board
27 of Podiatric Medicine, and deputies, employees, agents, and
28 representatives of the board or the Board of Podiatric Medicine
29 and the Senior Assistant Attorney General of the Health Quality
30 Enforcement Section shall keep in confidence during the course
31 of investigations, the names of any patients whose records are
32 reviewed and may not disclose or reveal those names, except as
33 is necessary during the course of an investigation, unless and
34 until proceedings are instituted. The authority of the board ~~of or~~
35 the Board of Podiatric Medicine and the Health Quality
36 Enforcement Section to examine records of patients in the office
37 of a physician and surgeon or a podiatrist is limited to records of
38 patients who have complained to the board or the Board of
39 Podiatric Medicine about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and investigators and representatives of the board or the Board of Podiatric Medicine, may inquire into any alleged violation of the Medical Practice Act or any other federal or state law, regulation, or rule relevant to the practice of medicine or podiatric medicine, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where patient consent is given.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where documents are requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of the board or the Board of Podiatric Medicine, they shall be provided within 15 days of receipt of the request, unless the licensee is unable to provide the documents within this time period for good cause. Failure to produce requested documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. The board may use its authority to cite and fine a physician and surgeon for any violation of this section ~~that occurs between the 16th day after receipt of the request through the 20th day after receipt of the request, and may use any additional authority it has to fine a physician and surgeon for any delay longer than 20 days.. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.~~

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

~~SEC. 11. Section 2357 is added to the Business and Professions Code, to read:~~

~~2357. The Bureau of State Audits shall conduct a thorough audit of the board's diversion program, which audit shall be completed by July 1, 2006. Notwithstanding any other provision of law, the authority of the board to maintain the diversion program shall terminate on July 1, 2007, unless extended by the Legislature by statute.~~

SEC. 11. Section 2334 is added to the Business and Professions Code, to read:

2334. Notwithstanding any other provision of law, with respect to the use of expert testimony in matters brought by the Medical Board of California, no expert testimony shall be permitted by any party unless a detailed written report by the expert witness, including findings and conclusions of the expert witness, is exchanged by the parties in advance of the hearing. The Office of Administrative Hearings shall adopt regulations in consultation with the Medical Board of California governing the required exchange of expert testimony in these proceedings.

SEC. 12. Section 2357 is added to the Business and Professions Code, to read:

2357. The Bureau of State Audits shall conduct a thorough performance audit of the board's diversion program to evaluate the effectiveness and efficiency of the program, and make recommendations regarding the continuation of the program and any changes or reforms required to assure that physicians and surgeons participating in the program are appropriately monitored, and the public is protected from physicians and surgeons who are impaired due to alcohol or drug abuse or mental or physical illness. The audit shall be completed by June 30, 2007. The board and its staff shall cooperate with the audit, and the board shall provide data, information, and case files as requested by the auditor to perform all of its duties. The provision of confidential data, information, and case files by the board to the auditor shall not constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files.

SEC. 13. Section 2358 is added to the Business and Professions Code, to read:

1 2358. *This article shall become inoperative on July 1, 2008,*
2 *and, as of January 1, 2009, is repealed, unless a later enacted*
3 *statute that is enacted before January 1, 2009, deletes or extends*
4 *the dates on which it becomes inoperative and is repealed.*

5 ~~SEC. 12.—~~

6 SEC. 14. Section 2435 of the Business and Professions Code
7 is amended to read:

8 2435. The following fees apply to the licensure of physicians
9 and surgeons:

10 (a) Each applicant for a certificate based upon a national board
11 diplomate certificate, each applicant for a certificate based on
12 reciprocity, and each applicant for a certificate based upon
13 written examination, shall pay a nonrefundable application and
14 processing fee, as set forth in subdivision (b), at the time the
15 application is filed.

16 (b) The application and processing fee shall be fixed by the
17 Division of Licensing by May 1 of each year, to become
18 effective on July 1 of that year. The fee shall be fixed at an
19 amount necessary to recover the actual costs of the licensing
20 program as projected for the fiscal year commencing on the date
21 the fees become effective.

22 (c) Each applicant who qualifies for a certificate, as a
23 condition precedent to its issuance, in addition to other fees
24 required herein, shall pay an initial license fee, if any. The initial
25 license fee shall be fixed by the board at an amount not to exceed
26 ~~eight~~ *nine* hundred dollars—~~(\$800)~~ *(\$900)*, in accordance with
27 paragraph (2) of subdivision (d). Any applicant enrolled in an
28 approved postgraduate training program shall be required to pay
29 only 50 percent of the initial license fee.

30 (d) (1) The biennial renewal fee shall be fixed by the board at
31 an amount not to exceed ~~_____~~ *nine hundred dollars (\$900)*, in
32 accordance with paragraph (2).

33 (2) The board shall fix the biennial renewal fee and the initial
34 license fee so that, together with the amounts from other
35 revenues, the reserve balance in the board's contingent fund shall
36 be equal to approximately two months of annual authorized
37 expenditures. Any change in the renewal and initial license fees
38 shall be effective upon a determination by the board, by
39 emergency regulations adopted pursuant to Section 2436, that
40 changes in the amounts are necessary to maintain a reserve

1 balance in the board's contingent fund equal to two months of
2 annual authorized expenditures in the state fiscal year in which
3 the expenditures are to occur.

4 (e) Notwithstanding Section 163.5, the delinquency fee shall
5 be 10 percent of the biennial renewal fee.

6 (f) The duplicate certificate and endorsement fees shall each
7 be fifty dollars (\$50), and the certification and letter of good
8 standing fees shall each be ten dollars (\$10).

9 (g) It is the intent of the Legislature that, in setting fees
10 pursuant to this section, the board shall seek to maintain a reserve
11 in the Contingent Fund of the Medical Board of California equal
12 to approximately two months' operating expenditures.

13 (h) The board shall report to the appropriate policy and fiscal
14 committees of each house of the Legislature whenever the board
15 proposes or approves a fee increase pursuant to this section. The
16 board shall specify the reasons for each increase and identify the
17 percentage of funds to be derived from an increase in the fees
18 that will be used for investigation or enforcement related
19 activities by the board.

20 ~~SEC. 13.—~~

21 *SEC. 15.* Section 364.1 of the Code of Civil Procedure is
22 repealed.

23 ~~SEC. 14.—~~

24 *SEC. 16.* Section 11371 of the Government Code is amended
25 to read:

26 11371. (a) There is within the Office of Administrative
27 Hearings a Medical Quality Hearing Panel, consisting of no
28 fewer than five full-time administrative law judges. The
29 administrative law judges shall have medical training as
30 recommended by the Division of Medical Quality of the Medical
31 Board of California and approved by the Director of the Office of
32 Administrative Hearings.

33 (b) The director shall determine the qualifications of panel
34 members, supervise their training, and coordinate the publication
35 of a reporter of decisions pursuant to this section. The panel shall
36 include only those persons specifically qualified and shall at no
37 time constitute more than 25 percent of the total number of
38 administrative law judges within the Office of Administrative
39 Hearings. If the members of the panel do not have a full
40 workload, they may be assigned work by the Director of the

Office of Administrative Hearings. When the medically related case workload exceeds the capacity of the members of the panel, additional judges shall be requested to be added to the panels as appropriate. When this workload overflow occurs on a temporary basis, the Director of the Office of Administrative Hearings shall supply judges from the Office of Administrative Hearings to adjudicate the cases.

(c) The administrative law judges of the panel shall have panels of experts available. The panels of experts shall be appointed by the Director of the Office of Administrative Hearings, with the advice of the Medical Board of California. These panels of experts may be called as witnesses by the administrative law judges of the panel to testify on the record about any matter relevant to a proceeding and subject to cross-examination by all parties, and Section 11430.30 does not apply in a proceeding under this section. The administrative law judge may award reasonable expert witness fees to any person or persons serving on a panel of experts, which shall be paid from the Contingent Fund of the Medical Board of California upon appropriation by the Legislature.

~~SEC. 15.—~~

SEC. 17. Section 11508 of the Government Code is amended to read:

11508. (a) The agency shall consult the office, and subject to the availability of its staff, shall determine the time and place of hearing. The hearing shall be held ~~in Oakland if the transaction occurred or the respondent resides within the First or Sixth Appellate District, in the County of Los Angeles if the transaction occurred or the respondent resides within the Second or Fourth Appellate District other than the County of Imperial or San Diego, in the County of Sacramento if the transaction occurred or the respondent resides within the Third or Fifth Appellate District, and in the County of San Diego if the transaction occurred or the respondent resides within the Fourth Appellate District in the County of Imperial or San Diego.~~ *at a hearing facility maintained by the office in Sacramento, Oakland, Los Angeles, or San Diego and shall be held at the facility that is closest to the location where the transaction occurred or the respondent resides.*

(b) Notwithstanding subdivision (a), *the hearing may be held at either of the following facilities :*

~~(1) If the transaction occurred in a district other than that of respondent's residence, the agency may select the county appropriate for either district.~~

~~(2) The agency may select a different place nearer the place~~

~~(1) A facility selected by the agency that is closer to the location where the transaction occurred or the respondent resides.~~

~~(3) The parties by agreement may select any place within the state.~~

~~(2) A facility within the state selected by agreement of the parties.~~

(c) The respondent may move for, and the administrative law judge has discretion to grant or deny, a change in the place of the hearing. A motion for a change in the place of the hearing shall be made within 10 days after service of the notice of hearing on the respondent.

~~(d) This section does not apply to hearings requested by the Medical Board of California. Unless good cause is identified in writing by the administrative law judge, hearings shall be held in a facility maintained by the office.~~

SEC. 16. ~~Section 11508.1 is added to the Government Code, to read:~~

~~11508.1. (a) The Medical Board of California shall consult the office, and subject to the availability of its staff, shall determine the time and place of hearing. The hearing shall be held at hearing facilities maintained by the office in Sacramento, Oakland, Los Angeles, or San Diego whenever specifically requested by the board.~~

~~(b) (1) If the transaction occurred in an area other than that of the respondent's residence, the board may select the place appropriate for the where the transaction occurred.~~

~~(2) The board may select a different place nearer the place where the transaction occurred or the respondent resides.~~

~~(3) The parties by agreement may select any place within the state.~~

~~(e) Notwithstanding subdivision (a), the respondent may move for, and the administrative law judge has discretion to grant or deny, a change in the place of the hearing to a location that is closest to where the transaction occurred or the respondent~~

~~resides. A motion for a change in the place of the hearing shall be made within 10 days after service of the notice of hearing on the respondent. Any order granting a change of venue shall state the reasons therefor in writing.~~

SEC. 18. Section 11523 of the Government Code is amended to read:

11523. Judicial review may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure, subject, however, to the statutes relating to the particular agency. Except as otherwise provided in this section, the petition shall be filed within 30 days after the last day on which reconsideration can be ordered. The right to petition shall not be affected by the failure to seek reconsideration before the agency. On request of the petitioner for a record of the proceedings, the complete record of the proceedings, or the parts thereof as are designated by the petitioner in the request, shall be prepared by the Office of Administrative Hearings or the agency and shall be delivered to petitioner, within 30 days after the request, which time shall be extended for good cause shown, upon the payment of the fee specified in Section 69950 *the cost for the preparation of the transcript, the cost of for preparation of other portions of the record and for certification thereof. Thereafter, the remaining balance of any costs or charges for the preparation of the record shall be assessed against the petitioner whenever the agency prevails on judicial review following trial of the cause. These costs or charges constitute a debt of the petitioner which is collectible by the agency in the same manner as in the case of an obligation under a contract, and no license shall be renewed or reinstated where the petitioner has failed to pay all of these costs or charges.* The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decision by an administrative law judge, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case. ~~Where~~ *If the* petitioner, within 10 days after the last day on which reconsideration can be ordered, requests the agency to prepare all or any part of the record, the time within which a petition may be filed shall be extended until 30 days after its delivery to him or her. The agency may file with the court the original of any document in the record in lieu of a copy thereof. ~~In the event that~~

1 *If* the petitioner prevails in overturning the administrative
2 decision following judicial review, the agency shall reimburse
3 the petitioner for all costs of transcript preparation, compilation
4 of the record, and certification.

5 ~~SEC. 17.—~~

6 *SEC. 19.* Section 12529 of the Government Code is amended
7 to read:

8 12529. (a) There is in the Department of Justice the Health
9 Quality Enforcement Section. The primary responsibility of the
10 section is to investigate and prosecute proceedings against
11 licensees and applicants within the jurisdiction of the Medical
12 Board of California including all committees under the
13 jurisdiction of the board or a division of the board, including the
14 Board of Podiatric Medicine, and the Board of Psychology.

15 (b) The Attorney General shall appoint a Senior Assistant
16 Attorney General of the Health Quality Enforcement Section.
17 The Senior Assistant Attorney General of the Health Quality
18 Enforcement Section shall be an attorney in good standing
19 licensed to practice in the State of California, experienced in
20 prosecutorial or administrative disciplinary proceedings and
21 competent in the management and supervision of attorneys
22 performing those functions.

23 (c) The Attorney General shall ensure that the Health Quality
24 Enforcement Section is staffed with a sufficient number of
25 experienced and able employees that are capable of handling the
26 most complex and varied types of disciplinary actions against the
27 licensees of the division or board.

28 (d) Funding for the Health Quality Enforcement Section shall
29 be budgeted in consultation with the Attorney General from the
30 special funds financing the operations of the Medical Board of
31 California, the California Board of Podiatric Medicine, and the
32 committees under the jurisdiction of the Medical Board of
33 California or a division of the board, and the Board of
34 Psychology, with the intent that the expenses be proportionally
35 shared as to services rendered.

36 ~~SEC. 18.—~~

37 *SEC. 20.* Section 12529.5 of the Government Code is
38 amended to read:

39 12529.5. (a) All complaints or relevant information
40 concerning licensees that are within the jurisdiction of the

1 Medical Board of California or the Board of Psychology shall be
2 made available to the Health Quality Enforcement Section.

3 (b) *The Senior Assistant Attorney General of the Health*
4 *Quality Enforcement Section shall assign attorneys to work on*
5 *location at the intake unit of the boards described in subdivision*
6 *(d) of Section 12529 to assist in evaluating and screening*
7 *complaints and to assist in developing uniform standards and*
8 *procedures for processing complaints.*

9 (c) The Senior Assistant Attorney General or his or her deputy
10 attorneys general shall assist the boards, division, or allied health
11 committees, including the Board of Podiatric Medicine, in
12 designing and providing initial and in-service training programs
13 for staff of the division, boards, or allied health committees,
14 including, but not limited to, information collection and
15 investigation.

16 (c) The determination to bring a disciplinary proceeding
17 against a licensee of the division or the boards shall be made by
18 the executive officer of the division, the board, or allied health
19 committee, including the Board of Podiatric Medicine, or the
20 Board of Psychology, as appropriate in consultation with the
21 senior assistant.

22 ~~SEC. 19.—~~

23 *SEC. 21.* No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 the only costs that may be incurred by a local agency or school
26 district will be incurred because this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the
28 penalty for a crime or infraction, within the meaning of Section
29 17556 of the Government Code, or changes the definition of a
30 crime within the meaning of Section 6 of Article XIII B of the
31 California Constitution.